

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

5:07-CT-3153-FL

ROGER BLAKENEY, et al.,

Plaintiffs,

v.

FRANK PERRY, Secretary of the North  
Carolina Department of Public Safety;  
and CARLTON JOYNER, Warden of  
Central Prison, et al.,<sup>1</sup>

Defendants.

JOINT STATUS REPORT

In reply to the Court's recent order directing the parties to submit a memorandum describing what proceedings have taken place since the Court was last updated (DE 15), the parties have conferred and jointly submit the following status report.

With regard to the status of proceedings in state court involving the constitutionality of defendants' lethal injection procedures, the parties report that the matter is moving forward in the North Carolina Court of Appeals. The parties previously informed this Court that the senior resident superior court judge of Wake County granted defendants summary judgment (DE 14). Following entry of notice of appeal and settlement of the record, the parties have now filed their opening briefs and are awaiting a date for oral argument before the Court of Appeals in *Robinson et al. v. Shanahan et al.*, No. COA13-504. There are three issues on appeal: whether the superior court erred by denying the inmates' Eighth Amendment claim on summary judgment, whether the superior court evaluated the inmates' state constitutional claim under the correct standard,

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<sup>1</sup> Defendants report that the individuals serving as secretary of the corrections agency and warden of Central Prison have changed since the original filing of this suit and since the last time either party filed a document in this case. The case caption here reflects those changes. See Fed. R. Civ. P. 25(d).

and whether the superior court erred in finding that the State need not conduct administrative rule making pursuant to state law prior to issuing an execution protocol.

With regard to the RJA, it remains the case that all plaintiffs in this suit have motions pending in state court pursuant to both the original version of the RJA, S.L. 2009-464, as well as the amended version, S.L. 2012-136. As the Court noted in its order, subsequent to the filing of these motions, a repeal of the RJA was enacted in section 5(a) of S.L. 2013-154. As a result, Plaintiffs anticipate that the next stage in their RJA cases will involve litigation over the question of whether the repeal bill may be retroactively applied to death row inmates who investigated and properly filed RJA motions.

In this regard, the parties note that there are currently two cases pending before the North Carolina Supreme Court which are expected to address questions of law under the RJA. In *State v. Marcus Robinson*, No. 411A94-5, the trial court granted relief under the original RJA. The State appealed and the Supreme Court granted discretionary review. The case has been fully briefed and is awaiting a date for oral argument. In a later case, *State v. Augustine, Golphin, and Walters*, No. 139P13-1, the trial court granted relief to three death row inmates under both the original and amended RJA. The State's petition for certiorari review of this case is pending. The parties do not know when litigation of plaintiffs' RJA motions will conclude.

The parties do not expect any execution dates to be set for plaintiffs until after the resolution of their RJA litigation and the conclusion of the pending litigation regarding lethal injection. Accordingly, subject to the Court's approval, the parties agree that it is appropriate for these proceedings to remain in abeyance.

Respectfully submitted this the 24<sup>th</sup> day of September, 2013.

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### **CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing Joint Status Report with the Clerk of Court using the CM/ECF system, which will send notification of this filing to the N.C. Department of Justice, Special Deputy Attorney General Joseph Finarelli at [jfinarelli@ncdoj.gov](mailto:jfinarelli@ncdoj.gov).

This the 24<sup>th</sup> day of September 2013.

/s/Kenneth J. Rose  
Kenneth J. Rose